

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

KENNY RUSSELL,

Defendant.

No. CR02-426P

ORDER ON LIMITED REMAND

This matter comes before the Court as a result of a LIMITED REMAND [Order or Memorandum] of the Ninth Circuit Court of Appeals pursuant to United States v. Ameline, 409 F.3d 1073, (9th Cir. 2005) (en banc). In accord with the limited remand procedures adopted in United States v. Ameline, each party may file a supplemental pleading addressing the sole question of whether the Court's sentencing decision "would have been materially different had the Judge been aware that the Guidelines were advisory." Ameline, 409 F.3d at 1079. The parties shall limit their supplemental pleadings to information available as of the original sentencing date and such pleadings, not to exceed 10 pages, shall be filed by **December 27, 2005**. In the supplemental pleadings, the parties are permitted to advance sentencing arguments previously barred or deemed "not ordinarily relevant" under pre-Booker guideline analysis. See United States v. Booker, 160 L.Ed. 621, 125 S. Ct. 738 (2005). Counsel should be mindful that the question at this point is not whether the

1 defendant should have received a different sentence. Those questions may be addressed if a
2 resentencing is ordered.

3 If the Court determines that resentencing is warranted, the Court will vacate the
4 sentence and schedule a new sentencing hearing with the defendant present. If the Court
5 concludes that the sentencing decision would not have been materially different, the Court
6 will enter an order denying resentencing with an appropriate explanation.

7 The Clerk is directed to note the consideration of the LIMITED REMAND on the
8 Court's motion calendar for **December 27, 2005**.

9 IT IS SO ORDERED.

10 DATED this 5th day of December, 2005.

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13 /s/Marsha J. Pechman
14 MARSHA J. PECHMAN
15 United States District Judge
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